

/s/
Jeanne E. LaFazia
Chief Judge

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. DISTRICT COURT
SIXTH DIVISION

Felix Hernandez :
v. : A.A. No. 14 – 043
Department of Labor and Training, :
Board of Review :

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Mr. Felix Hernandez urges that the Board of Review of the Department of Labor and Training erred when it found that he was ineligible to receive Temporary Disability Insurance (TDI) after January 12, 2013 because the report his physician submitted was unsigned. Jurisdiction to hear and decide appeals from decisions made by the Board of Review is vested in the District Court by Gen. Laws 1956 § 28-41-27. These matters have been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. For the reasons that follow, I conclude that the Board of Review's decision is

supported by reliable, probative, and substantial evidence of record and should be AFFIRMED; I so recommend.

I

FACTS AND TRAVEL OF THE CASE

An outline of the facts and travel of this case may be stated briefly: Claimant Hernandez filed a claim for TDI on August 2, 2013 which was apparently approved the same day and made effective September 2, 2012 — eleven months earlier. Decision of Referee, at 1.¹ However, his benefits were terminated effective the week-ending January 13, 2013. Id. Claimant filed a timely appeal and a hearing was held by Referee Carol A. Gibson on January 21, 2014. Claimant testified (assisted by an interpreter); the Department was represented by two of its employees. In her January 24, 2014 decision, Referee Gibson made the following findings of fact:

The claimant filed a claim for Temporary Disability Insurance (TDI) benefits on August 2, 2013. Based on medical documentation, it was determined the claimant was unable to work as of September 4, 2012. The claimant was paid TDI benefits from the week ending September 8, 2012 through the week ending January 12, 2013. The claimant's Qualified Health Care provider did not provide any additional medical certification for the claimant and he was disqualified from

¹ See also "Benefit Computation Statement" (August 2, 2013), in Department's Exhibit 1. Claimant was to receive a weekly benefit of \$216.00.

receiving further benefits. The claimant appealed this decision and TDI then sent a request to the provider requesting additional medical certification. The Qualified Health Care provider indicated that the claimant was not taken out on TDI by the doctor after January 14, 2013. The record provided by the Department contains three medical forms from the provider indicating this same information. At the hearing the claimant provided a medical indicating he was evaluated on January 16, 2014 and that he was still unable to work. This medical was stamped and not signed by the doctor. TDI had not received this information from the Qualified Health Care provider.

Referee's Decision, January 24, 2014, at 1. Based on these findings, and after quoting Rule 16(C) of the Temporary Disability Insurance Rules, Referee Gibson made the following conclusions:

* * *

Based on the credible testimony and medical evidence presented in this case, I find there is insufficient evidence and medical documentation to support the claimant was entitled to TDI benefits after January 12, 2013. The claimant's Qualified Health Care provider had certified on three occasions to TDI that the claimant was not taken out of work by the doctor after January 14, 2013. The medical provided by the claimant at the hearing was stamped and not signed by the doctor. Based on these considerations I find the claimant was not in compliance with the Rule 16(C) and, therefore, is subject to disqualification as previously determined by the Director.

Referee's Decision, January 24, 2014, at 2. Accordingly, the Referee affirmed the decision of the Director and found that claimant was disqualified from receiving TDI benefits after January 14, 2013.

Claimant filed a timely appeal and on February 26, 2014 the members of the Board of Review unanimously affirmed the Referee's decision — finding it to be a proper adjudication of the facts and the law applicable thereto; moreover, the Referee's decision was adopted as the Decision of the Board. Board of Review Decision, February 16, 2014, at 1. Thereafter, Mr. Hernandez filed a complaint for judicial review in the Sixth Division District Court.

II APPLICABLE LAW

The decision rendered by the Board of Review in this case centered on the application of Rule 16(C) of the Rules of the Rhode Island Department of Labor and Training for the Unemployment Insurance and the Temporary Disability Insurance Programs —

There shall be no determination made of the validity of a claim to waiting period or benefit credit unless the claimant's attending licensed Qualified Healthcare Provider shall have certified, on a form having his/her signature, to the inability of the claimant, due to sickness, to perform his/her regular or customary work; provided, however, that the Director of his/her authorized representative may for good cause, as determined by the Director, permit such determination without such signature.

III STANDARD OF REVIEW

The standard of review by which the court must proceed is established in Gen. Laws § 42-35-15(g), a section of the state Administrative Procedures Act, which provides as follows:

42-35-15. Judicial review of contested cases. —

* * *

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court “* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’ ”² The Court will not substitute its judgment

² Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Gen. Laws 1956 § 42-35-15(g)(5).

for that of the Board as to the weight of the evidence on questions of fact.³ Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.⁴

The Supreme Court of Rhode Island recognized in Harraka, supra, 98 R.I. at 200, 200 A.2d at 597, that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

* * * eligibility for benefits is to be determined in the light of the expressed legislative policy that “Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family.” G.L. 1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

³ Cahoone v. Board of Review of the Dept.of Employment Security, 104 R.I. 503, 506, 246 A.2d 213, 215 (1968).

⁴ Cahoone v. Board of Review of Department of Employment Security, 104 R.I. 503, 506, 246 A.2d 213 (1968). Also D’Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

IV
ISSUE AND ANALYSIS

A
The Issue

The Board of Review (adopting the decision of Referee Gibson as its own) upheld the Referee's decision denying Mr. Hernandez benefits after January 14, 2013 because it found that the evidence Claimant submitted to show that he remained unable to work after January 14, 2013 — the unsigned medical report — was insufficient. It so found for two reasons: first, it lacked persuasive authority when compared to the multiple reports it had previously received; and second, it was not competent evidence because Rule 16(C) requires such reports to be signed. And so we shall be required to determine whether the Board's decision is supported by the facts of record and the pertinent law. For the reasons I shall explain, I find this conclusion is not clearly erroneous.

B
The Evidence of Record

But before we can provide our rational for upholding the Board's decision, we must examine for ourselves the testimony and evidence of record.

The first witness was Ms. Maureen Mooney, the medical unit manager of the TDI program. Referee Hearing Transcript, at 2, 10. She testified that Mr. Hernandez's TDI claim, which was based on a lower back injury, was filed on August 2, 2013, but it was made effective back to September 2, 2012. Referee Hearing Transcript, at 10. Claimant received TDI benefits for 19 weeks [from the week-ending September 8, 2012 through the week-ending January 12, 2013]. Referee Hearing Transcript, at 9-10. Ms. Mooney explained that benefits stopped because "his [i.e., Claimant's] doctor certified that he was not unable to work after that time." Referee Hearing Transcript, at 11 (emphasis and explanatory comment added).⁵

And after Mr. Hernandez appealed from the termination of his TDI benefits, the Department sought further information from the doctor. Referee Hearing Transcript, at 13.

Next, Ms. Patricia Cadoret, Nursing Care Evaluator, testified briefly. Referee Hearing Transcript, at 2, 18. She explained that information from the

⁵ See Department's Exhibit No. 1, at 4. Specifically, the form received by the TDI unit, labelled a "Qualified Healthcare Provider Appeal Notice" — dated 12/5/13 — stated: "Pt was not taken out on TDI for Dr. Guzman after 1/14/13." See also Referee Hearing Transcript, at 15.

qualified healthcare provider is reviewed by nurses or a medical consult to see whether it conforms to TDI standards. Referee Hearing Transcript, at 18. For instance, in a case such as the one at bar, they would review the doctor's note to evaluate the reason the doctor gave for reversing a previous statement that the claimant was able to work after a certain date. Id.

Finally, Mr. Hernandez was asked by Referee Gibson whether he had any further medical evidence to present. Referee Hearing Transcript, at 20. He said he did. In addition to an MRI report that was already in the file, he proffered a letter from his physician, Dr. Levis Guzman, M.D., dated January 16, 2014. Referee Hearing Transcript, at 21-22.⁶ The letter indicated Mr. Hernandez had been “unable to work from 12/1/12 requested TDI dates, until present, 1/16/14.” Id.⁷ And, as the Referee noted at the hearing, Dr. Guzman did not explain why his previous submissions were being contradicted. Referee Hearing Transcript, at 22.⁸

⁶ See Claimant's Exhibit No. 1, at 1.

⁷ See Claimant's Exhibit No. 1, at 1.

⁸ While the latter date given here was problematic in light of the Doctor's previous submissions that Mr. Hernandez could work beginning in January of 2013, the first date (12/1/12) was also problematic, given that — based on Dr. Guzman's reports — Mr. Hernandez was awarded benefits effective in September of 2012.

According to Mr. Hernandez, the doctor blamed the secretary for the earlier submissions. Referee Hearing Transcript, at 22-23.

The Referee turned to Ms. Cadoret, who testified that if her unit had been given the new letter from Dr. Guzman, they would have requested more information — in light of both the form of the letter (the fact that it appeared to bear a stamped signature) and its contents (the fact that it contradicted the doctor's previous submissions). Referee Hearing Transcript, at 28-29.

C

Rationale

I begin my analysis of this case by finding, from an examination of Claimant's Exhibit No. 1, that the Board's finding that the letter bore a stamped signature is not clearly erroneous. As a result, we must determine that the Board was correct to find that Rule 16(C)'s mandate (that medical reports that are the basis of a claim must be signed) should be applied in this case. However, we must also note that the last sentence of the rule allows the Department to permit reliance on stamped reports if good cause exists; unfortunately, neither the Referee nor the Board determined whether such good cause was in fact shown. As

a result, we shall be required to address this question for the first time in this appeal.

It is clear from a reading of the Referee's decision — which was adopted by the Board of Review as its own — that she, like the DLT personnel who attended the hearing she conducted, had grave misgivings about the letter from Dr. Guzman that Mr. Hernandez presented at the hearing. Without doubt, it was objectively questionable because it was contradicted by other communications received from the physician as to the duration of Claimant's disability and because it was clearly inaccurate as to the date when Mr. Hernandez's disability began. Given these circumstances, I believe it is clear that a stamped letter could not be given full credit.

Accordingly, I must conclude that the Board of Review was fully justified in refusing to permit Mr. Hernandez's claim to be grounded on a stamped medical report as provided in Rule 16(C) of the Rules of the Rhode Island Department of Labor and Training for the Unemployment Insurance and the Temporary Disability Insurance Programs.

V
CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the Board of Review regarding claimant's eligibility to receive unemployment benefits was supported by the reliable, probative and substantial evidence of record and was not clearly erroneous. Gen. Laws 1956 § 42-35-15(g)(5).

Accordingly, I recommend that the decision of the Board of Review in the instant matter be AFFIRMED.

 /s/
Joseph P. Ippolito
MAGISTRATE

JANUARY 9, 2015

